IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No. 507 of 2005

Sukh Chand Tyagi S/o Late Sri Banwari lal
Aged about 55 years
R/o 349/15 West Amber Talab
Roorkee, Haridwar ... Petitioner

Vs

1. Additional District Judge/Special Judge
   Anti Corruption C.B.I., Dehradun
2. P.C. Khera, Senior Treasury Officer
   Haridwar, District Haridwar ... Respondents

Sri B.S. Adhikari, learned counsel for the petitioner
Sri U.K. Uniyal learned senior Advocate assisted by Sri Shobhit Saharia, learned counsel for the C.B.I.

Hon'ble B.C. Kandpal, J.

This petition under Section 482 has been filed by the applicant – Sukh Chand Tyagi for quashing the proceedings in C.B.I. Case No. 2 of 2005 under Sections 120-B, 409, 420, 467, 468, 471 I.P.C. read with Section 13(2) and 13(1)(d) of Prevention of Corruption Act pending in the court of Special Judge/Anti Corruption Act, C.B.I., Dehradun.

2. Heard Sri B.S. Adhikari, learned counsel for the petitioner, Sri U.K. Uniyal, learned senior Advocate assisted by Sri Shobhit Saharia, learned counsel for the C.B.I. and perused the record.

3. The record reveals that at the time of the occurrence, the petitioner was posted as Assistant Treasury Officer at Haridwar. The petitioner was asked to discharge the additional responsibility of the Sr. Treasury Officer on account of the reason that Sr. Treasury Officer had gone on leave from 9th August, 2002 and onwards.

4. It reveals that when the petitioner was holding the charge of Sr. Treasury Officer during the aforesaid period, he

dishonestly and fraudulently passed some bills and instead of issuing the cheques in the name of Drawing and Disbursement Officer, he directly issued the cheques in the name of private persons for providing direct benefits to them and thus caused a loss of Rs. 55.00 lacs to the Government.

5. A case was registered against the petitioner for the aforesaid offence and the Judge, Anti Corruption, C.B.I., Dehradun took the cognizance for the aforesaid offence against the petitioner on 11.07.2005. The petitioner has thus by way of this petition has prayed for quashing the entire aforesaid proceedings of the criminal case pending against him.

6. The respondent/C.B.I. has filed the counter affidavit in this case and has taken the plea that the petitioner has admitted the fact that he found everything correct except the cheques prepared in the name of private persons whereas it must be prepared by writing designation of P.W.D. Officers. Thus, it is submitted by the learned counsel for the C.B.I. that when the bills itself were forged or fake, under such circumstances, it was the duty bestowed by the Government that Treasury Officer would verify the genuineness of the bills but in the instant case, the petitioner dishonestly or fraudulently did not verify bills himself and preferred issuance of cheques in the name of private persons by ignoring all the treasury rules. It has also been submitted that the treasury cheques in no case were issued in the name of private persons. The stand of the C.B.I. is that the cheques issued by the petitioner in the name of private persons were from the salary/G.P.F. heads, which is given for the Government employees. Therefore, the petitioner has with a dishonest intention without verifying the bills himself issued the cheques in the name of the private persons in order to provide the

benefit to the private persons and thus has caused a huge loss of the Government exchequer to the State.

7. Having considered the arguments advanced by the learned counsel for the parties I, do not find any abuse of process of court in this case. The disputed question of fact can be settled by the trial judge. Any judgment rendered by me would amount to premature judgment where the evidence is still incomplete and hazy. I am not supposed to embark upon an enquiry with regard to the credibility of the evidence while exercising the jurisdiction under Section 482 Cr.P.C.

8. Learned counsel for the petitioner has also argued that the sanction accorded in this case is not in accordance with law and the prosecution of the petitioner cannot proceed on account of the illegal sanction.

9. This situation has been clarified by the respondent/C.B.I. and it has been pleaded that obviously the sanction was accorded on 2nd April, 2005 but immediately after the sanctioning authority came to know with regard to the technical error caused by issuing the sanction order to the petitioner before filing the chargesheet, the sanctioning order was withdrawn on 28.04.2005 and immediately thereafter another sanction order was accorded in this case.

10. Under the aforesaid circumstances, I do not find any illegality in this case. The petition devoid of any merit and is liable to be dismissed.

11. Accordingly, the petition under Section 482 Cr.P.C. filed by the petitioner, is dismissed. Interim stay order dated 08.09.2005 passed by this Court stands vacated.

12. However, in case, if the petitioner appears before the court below for obtaining the bail, his bail shall be considered expeditiously.

(B.C. Kandpal, J.)

03.08.2006
ASWAL